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September 27, 2002

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Application by Verizon Virginia Inc., *et al*, for Authorization to Provide In-Region InterLATA Service in Virginia, WC Docket No. 02-214

Dear Ms. Dortch:

On September 26, 2002, the undersigned of Covad Communications Company, made an *ex parte* presentation in the above-referenced docket to Commission staff via telephone. The following Commission staff members were present: Uzoma Onyeije and Mary McManus. Pursuant to request by Commission staff, Covad provides this summary of its presentation, along with specific responses to questions raised by Commission staff.

The purpose of this presentation was to provide Commission staff with Covad's response to Verizon's stated refusal to provide Covad with access to the bulk loop qualification extract available to Verizon's VADI division, Verizon's internal division through which it provides advanced services. On September 25, 2002, Verizon filed an *ex parte* letter with the Commission in which it stated its intent to refuse providing Covad with continued access to the bulk loop qualification extract for VADI that Verizon has been providing to Covad until now.<sup>1</sup> Verizon's letter also indicates that it believes it is under no obligation to provide the additional information available to VADI to competitors like Covad. For a host of reasons, Covad disagrees. Covad further believes that Verizon's application for 271 authorization in this docket cannot be granted while it continues to refuse providing Covad with non-discriminatory access to the OSS functions, including loop qualification information, available to VADI.

As an initial matter, to the extent that the Commission is uncertain whether Verizon's VADI operations, which are an internal division of Verizon, are subject to the same 251(c) unbundling obligations to which the entire Verizon parent ILEC is subject, a number of facts should make abundantly clear that VADI is so bound. First, as Verizon itself acknowledges, it has reintegrated the assets of VADI, formerly a separate affiliate, into the parent company Verizon – VADI now is simply another internal division of

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<sup>1</sup> See Letter from Ann D. Berkowitz, Verizon, to Marlene H. Dortch, FCC, dated September 25, 2002, filed in WC Docket 02-214.



Verizon.<sup>2</sup> As Verizon acknowledges, Verizon continues to remain subject to the conditions of the Bell Atlantic-GTE merger conditions requiring VADI to use the same pre-ordering and ordering interfaces as unaffiliated CLECs, and requiring Verizon to provide unaffiliated CLECs with the same provisioning and maintenance and repair processes Verizon provides to VADI.<sup>3</sup> These continuing merger conditions, however, which create affirmative requirements for Verizon's VADI operations, do not somehow relieve the VADI portion of Verizon from the obligations of the parent ILEC. Indeed, as the D.C. Circuit's *ASCENT* decision makes clear, even when Verizon's VADI operations were organized as a separate affiliate, VADI was a "successor or assign" of Verizon, and therefore subject to the same obligations under section 251(c) as the parent ILEC.<sup>4</sup> Re-integrating the assets of VADI back into the parent ILEC does nothing to change this. In fact, the reintegration of VADI's assets and operations into the parent ILEC only underscores the fact that the VADI portion of Verizon remains subject to the same legal obligations as the parent ILEC. As the *ASCENT* decision makes clear, an ILEC's creation of a separate affiliate cannot be a vehicle for the ILEC's evasion of its section 251(c) obligations. VADI was, and continues to be, part and parcel of Verizon, which is clearly an ILEC. Verizon's VADI operations therefore remain subject to the same 251(c) requirements as the rest of Verizon.

Among these obligations is the ILEC obligation to provide non-discriminatory access to OSS. As the Commission has stated time and again, ILECs must provide competitors with access to the same OSS functions in the same time and manner as ILECs provide to themselves, their customers, or their affiliates.<sup>5</sup> In this case, there is no doubt that the information at issue here is available to VADI for the provision of VADI's xDSL services. Hence, the additional information available to VADI and at issue here clearly falls within this first prong of an ILEC's OSS obligations. Additionally, even for those OSS functions for which there is no ILEC retail analogue, ILECs are required to provide competitors with OSS access affording them a meaningful opportunity to compete.<sup>6</sup> In this case, Verizon's failure to provide Covad with any access whatsoever to the additional information VADI has at its disposal can hardly be deemed as affording Covad a meaningful opportunity to compete. In addition, ILECs are subject to a separate,

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<sup>2</sup> See Verizon Lacouture/Ruesterholz Decl. at para. 137. See also *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee For Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, Order, 16 FCC Rcd 16915 (2001) (*VADI Accelerated Transfer Order*).

<sup>3</sup> See Verizon Lacouture/Ruesterholz Decl. at para. 137.

<sup>4</sup> See *Assoc. of Communications Enter. v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) (*ASCENT v. FCC*).

<sup>5</sup> See, e.g., *Verizon, et al., Application to Provide In-Region InterLATA Services in New Jersey*, Memorandum Opinion and Order, FCC 02-189, App. C, at paras. 26-28.

<sup>6</sup> See *id.*



subsidiary OSS obligation to provide competitors with non-discriminatory pre-order access to loop makeup information. As the Commission has previously made clear, this requires providing competitors with access to the same loop makeup information in the same time and manner in which it could be accessed by any ILEC personnel, retail or back-office.<sup>7</sup> Under any of these three standards, Verizon's having made available to its VADI personnel pre-order OSS information, including loop makeup information, that Verizon fails to make available to competitors clearly fails to satisfy the standards established in the Commission's prior 271 precedent.

In addition, under a separate provision of the Commission's rules, ILECs are required to provide competitors with the information necessary to allow them to access UNEs.<sup>8</sup> Here, for at least one field of the information made available to VADI that Covad has been able to identify, VADI has access to information about whether Verizon voice service is not present on a particular loop.<sup>9</sup> As the Commission's line sharing rules make clear, the line shared loop UNE is only available to competitors when ILEC voice transmission is also present on the loop.<sup>10</sup> Thus, the field of information indicating that Verizon's voice service is not present on a loop is certainly integral to Covad's ability to obtain the line shared loop UNE.<sup>11</sup> Accordingly, the provision of the Commission's rules requiring ILECs to provide sufficient information to competitors to enable them to access UNEs operates as a separate requirement on Verizon to provide Covad with the same information about the absence of Verizon voice service on a loop that Verizon makes available to VADI.

The fact is, Verizon has told Covad and the Commission very little about the additional information it is making available to its VADI personnel. In response to Covad's discovery of Verizon's discriminatory practices, Verizon is now attempting to "sweep them under the rug," by cutting off Covad's further access to this information and by claiming that the information was developed by Verizon's personnel operating under the auspices of Verizon's VADI division. As *ASCENT* makes clear, sweeping OSS functions under the rug of VADI simply cannot be used as a vehicle for Verizon to evade

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<sup>7</sup> See *id.* at para. 35.

<sup>8</sup> See 47 C.F.R. § 51.307(e).

<sup>9</sup> See Covad Reply Comments at 2-4.

<sup>10</sup> See 47 C.F.R. § 51.319(h)(3).

<sup>11</sup> Verizon's offhand comment that this information constitutes CPNI is almost laughable. CPNI is defined in the Act as "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship." 47 U.S.C. § 222(f)(1)(A). Information regarding the lack of service on a particular facility can hardly be deemed to constitute CPNI.



its obligations to make the same OSS functions available to competitors that it makes available to its own personnel. Until Verizon restores Covad's access to the loop information and OSS functions Verizon makes available to its VADI personnel, and does so such that Covad can make use of this information in the same manner as Verizon's VADI personnel, Verizon's instant application for 271 authorization in Virginia must be denied. Indeed, Covad is copying the Commission's Enforcement Bureau on this letter, and urges the Enforcement Bureau to investigate this instance of Verizon backsliding on its commitment under previous section 271 proceedings to provide competitors with non-discriminatory access to OSS functions, including pre-order access to loop qualification information.<sup>12</sup>

The twenty-page limit does not apply as set forth in DA 02-1893.

Respectfully submitted,

/s/ Praveen Goyal

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<sup>12</sup> See 47 U.S.C. § 271(d)(6).